

**U.S. NATIONAL ADMINISTRATIVE OFFICE
NORTH AMERICAN AGREEMENT
ON LABOR COOPERATION**

PUBLIC REPORT OF REVIEW

NAO SUBMISSION #940003



**BUREAU OF INTERNATIONAL LABOR AFFAIRS
U.S. DEPARTMENT OF LABOR**

April 11, 1995

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I. INTRODUCTION

The U.S. National Administrative Office (NAO) was established under the North American Agreement on Labor Cooperation (NAALC). The NAALC, often referred to as the labor side agreement to the North American Free Trade Agreement (NAFTA), provides for the review of submissions concerning labor law matters arising in Canada or Mexico by the U.S. NAO. Article 16(3) of the NAALC specifically provides that:

Each NAO shall provide for the submission and receipt, and periodically publish a list, of public communications on labor law matters arising in the territory of another Party. Each NAO shall review such matters, as appropriate, in accordance with domestic procedures.

"Labor law" is defined in Article 49 of the NAALC, as follows:

. . . . laws and regulations, or provisions thereof, that are directly related to: (a) freedom of association and protection of the right to organize; (b) the right to bargain collectively; (c) the right to strike; (d) prohibition of forced labor; (e) labor protections for children and young persons; (f) minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective agreements; (g) elimination of employment discrimination on the basis of grounds such as race, religion, age, sex, or other grounds as determined by each Party's domestic laws; (h) equal pay for men and women; (i) prevention of occupational injuries and illnesses; (j) compensation in cases of occupational injuries and illnesses; (k) protection of migrant workers.

Procedural guidelines governing the receipt, acceptance for review, and conduct of review of submissions filed with the U.S. NAO, were issued pursuant to Article 16(3) of the NAALC. The U.S. NAO's procedural guidelines were published and became effective on April 7, 1994, in a Revised Notice of Establishment of the U.S.

National Administrative Office and Procedural Guidelines.¹ Pursuant to these guidelines, once a determination is made to accept a submission for review, the NAO shall conduct such further examination of the submission as may be appropriate to assist the NAO to better understand and publicly report on the issues raised therein. The Secretary of the NAO shall issue a public report that includes a summary of the review proceedings and any findings and recommendations. The review must be completed and the public report issued within 120 days of acceptance of a submission for review, unless circumstances require an extension of time of up to 60 days.

The instant report is the second public report issued by the U.S. NAO on the review of a submission filed in this office. It is important to note that the review and issuance of public reports on submissions is only one function of the U.S. NAO. The NAALC provides additional methods of advancing the objectives agreed to by the Governments of the United States, Canada and Mexico, namely through consultations between the NAOs, cooperative activities and the exchange and dissemination of public information.

II. SUMMARY OF SUBMISSION

On August 16, 1994, Submission No. 940003 was filed with the U.S. NAO by four human rights and workers' rights organizations: the International Labor Rights Education and Research Fund (ILRERF), the Asociación Nacional de Abogados Democráticos (National Association of Democratic Lawyers), the Coalition for Justice in the

¹ See 59 Fed. Reg. 16660-2 (1994).

Maquiladoras, and the American Friends Service Committee (AFSC). The submission was timely accepted for review by the Secretary of the NAO on October 13, 1994. Notice of acceptance for review was published in the Federal Register on October 20, 1994.

The submission concerns allegations involving the maquiladora operations of the Sony Corporation, doing business as Magneticos de Mexico (MDM), in Nuevo Laredo, Tamaulipas, Mexico. The five Magneticos de Mexico plants manufacture computer disks, video cassette tapes, and audio cassette tapes. According to the submission, approximately 1,700 unionized workers are employed in these plants, and an estimated 80% are women.² The labor law matters raised in the submission concern freedom of association, protection of the right to organize, and minimum employment standards relating to hours of work and holiday work.³

With respect to freedom of association and the right to organize, the submission alleges that MDM in collaboration with the leadership of the official Mexican labor confederation (the Confederación de Trabajadores Mexicanos, CTM) in Nuevo Laredo, acted in violation of Mexican labor law for the purpose of ensuring compliant union leadership, by repeatedly interfering in an internal union dispute and a union delegate election held on April 15, 1994.

² In its letter of January 19, 1995, the company states that it employs 2,120 employees at its Nuevo Laredo facilities.

³ The allegations concerning minimum employment standards will not be discussed further in this report, as the Secretary of the NAO declined to accept these specific allegations for review as explained in the Federal Register notice of October 20, 1994. 59 Fed. Reg. 52992.

The submitters frame their allegations in the context of an intra-union struggle taking place throughout the city of Nuevo Laredo, in which the maquiladora workers were challenging the CTM leadership for more democratic representation within their union, and criticizing the alleged collaboration between management and the CTM leaders.⁴

The first specific allegation is that in January 1994, MDM suspended an elected union delegate from employment because she had complained about recent work rule changes. The suspension followed the delegate's removal from her union position by the Federación de Trabajadores de Nuevo Laredo's (FTNL) Secretary-General. Her return to employment, as opposed to discharge from employment, was conditioned upon not speaking with other workers for the period of the suspension.

Additionally, the submission alleges that when delegate elections were announced, a campaign of intimidation was directed at workers organizing an alternate dissident slate to oppose the official slate backed by CTM. One production chief was allegedly demoted to a line job, where she was assigned to lift heavy boxes, for speaking out against CTM leadership at an in-plant union meeting. She also claims to have been told that if she continued agitating workers she would be fired. In March and April, several

⁴ Part of the relevant background presented in this submission is that José "Chema" Morales Domínguez assumed the position of Secretary General of the Federación de Trabajadores de Nuevo Laredo (FTNL), the overall confederation of CTM unions in Nuevo Laredo, and also claimed to be the Secretary General of the Maquiladora Section of the FTNL in approximately December of 1993.

alternate slate delegates (approximately seven) were allegedly fired by MDM prior to the delegate election, without cause.

According to the submission, the delegate election held on April 15 in a field behind MDM plant number 7 was flawed. Specific allegations that the election was not conducted in a fair and democratic manner include: not all plant workers received notice of the scheduled election, and those who did, found out at 7 p.m. the night before the 7 a.m. election was to be held; voting was not by secret ballot; union officials and members of the official slate sought to coerce and intimidate workers; MDM representatives observed the conduct of the election and were able to ascertain which workers supported the dissident slate. MDM is also alleged to have collaborated with the police in violently suppressing a work stoppage and demonstration which ensued as a result of the election, resulting in injuries to several workers; MDM further brought criminal charges against many of these workers. Additional reprisals against workers who supported the alternate slate are alleged to have occurred subsequent to the election as well, wherein workers claim they were fired or forced to resign and coerced into accepting statutory severance pay and relinquishing the right to contest their dismissals.

The final allegation relating to the freedom of association and the right to organize, is that the Mexican government has thwarted attempts by the workers to register an independent union, Sindicato Unico de Trabajadores de la Cia. Magneticos de Mexico, to represent the workers at MDM. According to the submission, the petition was

properly filed with the local Conciliation and Arbitration Board (CAB) in May of 1994, but was denied for three improper and technical reasons: 1) the CAB claimed that the independent union failed to include in its bylaw the precise language of Article 356 of the Federal Labor Law concerning the union's objectives;⁵ 2) the CAB stated that the MDM workers could not register an independent union because they were represented under an existing collective bargaining agreement with the Maquiladora Section of the FTNL; and 3) the CAB asserted that the documentation submitted by the independent union was technically deficient.

Finally, the submission charges the Mexican government with violating its obligations under the NAALC, and under ILO Conventions 87 and 98, which guarantee freedom of association and the right to organize and bargain collectively.

The submitters requested the following relief:

- 1) That the NAO initiate a review under Article 16 of the NAALC;
- 2) That the NAO hold a public hearing in Laredo, Texas, having made adequate arrangements for translation and visas for witnesses;
- 3) That Mexico require the Sony Corporation to comply with Mexican labor law, including international agreements to which Mexico is a signatory; and
- 4) That the U.S. NAO Secretary recommend that the Secretary of Labor request ministerial consultations pursuant to Article 22 of the NAALC.

⁵ The submission states that "The proposed bylaws stated that the union 'is constituted as a coalition to defend our rights as workers.' According to the CAB, the union should have stated that it is 'an association of workers constituted for the study, improvement, and defense of their interests.'"

III. CONDUCT OF THE REVIEW

The NAO procedural guidelines specify that following a determination by the NAO Secretary to accept a submission for review, the Secretary shall publish promptly in the Federal Register a notice of determination, a statement specifying why the review is warranted, and the terms of the review.⁶ Moreover, the NAO shall then conduct such further examination of the submission as may be appropriate to assist the NAO to better understand and publicly report on the issues raised.

This submission was filed on August 16, 1994. It was accepted for review on October 13, 1994, within 60 days of its receipt, as required by the NAO's procedural guidelines, with respect to the issues of freedom of association and the right to organize. The NAO published its notice that Submission No. 940003 had been accepted for review on October 20, 1994.⁷ In the notice announcing the initiation of the review, the NAO articulated its rationale for initiation of the review on the allegations concerning freedom of association and the right to organize as well as the objectives of such a review. The notice further stated that acceptance of the submission for review was not intended to indicate any determination as to the validity or accuracy of the allegations contained in the submissions.

⁶ Irasema Garza is the Secretary of the U.S. NAO.

⁷ 59 Fed. Reg. 52992 (1994).

A. INITIATION OF THE REVIEW

Review of this submission was deemed appropriate because it satisfied the criteria for acceptance as stated in Section G.2 in the NAO procedural guidelines: 1) it raised issues relevant to labor law matters in Mexico and 2) a review would further the objectives of the NAALC as set out in Article 1.⁸ Article 1 states that the objectives of the NAALC include improving working conditions and living standards in each Party's territory; promoting, to the maximum extent possible, the labor principles set out in Annex 1; promoting compliance with, and effective enforcement by each Party of, its labor law; and fostering transparency in the administration of labor law.

B. OBJECTIVE OF THE REVIEW

Consistent with Section H.1 of the NAO guidelines, the stated objective of the review was to gather information to assist the NAO to better understand and publicly report on the government of Mexico's promotion of compliance with, and effective enforcement of, its labor law through appropriate government action, as set out in Article 3 of the NAALC. In particular, the NAO notice of acceptance stated that the review would "focus on compliance with, and effective enforcement of, labor laws that guarantee the right of

⁸ A statement was submitted by the U.S. Council for International Business, by letter dated February 1, 1995, arguing that the NAO's acceptance of this submission was premature because domestic administrative and judicial remedies available in Mexico had not been exhausted. The letter indicated that these comments were endorsed by the National Association of Manufacturers.

association and the right to organize freely and prohibit the dismissal of workers because of efforts to exercise those rights."

In conducting this review, the NAO encouraged a broad participation in the review process, and gathered information from a variety of sources, including the submitters, the company named in the submission, workers from the company and other individuals who elected to present testimony at a public hearing, and the Mexican NAO. In addition, the U.S. NAO commissioned a research report by an expert consultant on the issues of Mexican labor law raised in Submission No. 940003 and Submission No. 940004.⁹ The NAO provided specific questions to the expert consultant on the issues presented in this submission concerning applicable Mexican labor law and its enforcement by the Mexican government. In the interest of gathering as much information as possible on the labor law matters presented for review, these questions were also provided to the submitters, the companies, and the U.S. Library of Congress.¹⁰ Finally, the NAO examined relevant materials from its review of Submission No. 940001 and Submission No. 940002, including the consultants' reports on Mexican labor law generated for those

⁹ Submission No. 940004 was withdrawn from consideration by its submitter, the United Electrical, Radio and Machine Workers of America, by letter dated January 19, 1995. By that time the consultant's report had been completed and addressed the issues raised in both submissions, involving freedom of association and the right to organize.

¹⁰ The questions were also provided to United Electrical, Radio and Machine Workers of America and the company named in their submission, because Submission No. 940004 was still pending review before the NAO at this stage.

reviews.¹¹

The focus of this review was on the government of Mexico's enforcement of its domestic labor law with respect to the allegations raised by the submitters in this submission, rather than on the conduct of the individual company named in the submission. The NAO review process is an information-gathering process intended to further the objectives of the NAALC. Moreover, the NAO is not an appellate body, nor is it a substitute for pursuing domestic remedies.

C. INFORMATION FROM THE SUBMITTERS

Submission No. 940003 was presented with attached affidavits of nine workers involved in the events described in the submission, along with a copy of the registration petition filed before the local CAB in an attempt to register an independent union. Representatives for the submitters met with the NAO and its legal advisors on September 23, 1994, and on October 17, 1994. Letters from the submitters, dated October 4, 1994, November 17, 1994, January 20, 1995 and February 15, 1995 were submitted to the NAO by ILRERF. ILRERF provided responses to the questions presented by the U.S. NAO in its correspondence of January 20, 1995. Additionally, on February 1, 1995, ILRERF filed a request to testify, providing the names of the witnesses planning to present information at the hearing and a brief synopsis of the testimony to be provided by

¹¹ The U.S. NAO issued a Public Report of Review on Submission No. 940001 and Submission No. 940002 on October 12, 1994. Both of these submissions dealt with Mexico's enforcement of its domestic laws regarding the freedom of association and the right to organize.

each.

D. INFORMATION FROM THE COMPANY

The NAO notified the Sony Corporation of the initiation of a review of Submission No. 940003 and invited the company to provide information on the issues accepted for review. Legal counsel for Sony met with the NAO and its legal advisers on November 29, 1994. In addition, counsel for Sony submitted two written statements to the NAO responding to the submission and to the testimony presented at the public hearing held in the course of this review. Sony's letters were dated January 19, 1995 and February 21, 1995 respectively, and the company chose not to respond to the prepared questions disseminated by the U.S. NAO.

The company emphasizes that it is not a party to this matter, but that an investigation was conducted at MDM in response to the allegations raised in this submission. The results of this internal investigation were presented orally and in writing before the NAO. The letter of January 19 provides background information on Magneticos de Mexico and its employment practices, stating that it operates in full compliance with Mexican laws. MDM further alleges that, contrary to the submitters' assertions, all but two of the employees identified in the submission who were terminated or resigned, executed full releases of MDM, and accepted severance payments consistent with Mexican law, which were subsequently endorsed by the State government.

Additionally, MDM asserts that the election in question was not a union delegates election for each maquiladora, but rather an

election for representatives to attend a union convention aimed at forming separate union "sections" at each maquiladora in Nuevo Laredo. MDM denies that any of its personnel intimidated dissident union members or attended or witnessed the union election on April 15. With respect to the post-election picketing and work stoppage, MDM asserts that they called the Mayor and not the police, and that although this work-stoppage was in violation of Mexican law, they granted amnesty to all employees who wished to return to work, and there was no violence used against the workers.

In its subsequent letter of February 21, 1995, written to supplement its letter of January 13, MDM submits that the testimony presented at the hearing does not support any findings that MDM violated any Mexican labor laws or that the Mexican authorities condoned any such violations.

E. INFORMATION FROM THE MEXICAN NAO

In gathering information for this review, the U.S. NAO has consulted with its Mexican counterpart pursuant to Article 21 of the NAALC. On January 9, 1995, the Secretary of the U.S. NAO forwarded a list of questions to the Mexican NAO pertaining to Mexican labor law, its administration and enforcement, and a request for relevant statistics. The response prepared by the Mexican NAO, dated February 3, 1995, was received by the U.S. NAO on February 9, 1995, and consisted of prepared responses to the questions presented. Public information relevant to the topics of inquiry, including judicial opinions, was also attached. This information was considered and utilized in the preparation of this report.

F. INFORMATION FROM EXPERT LEGAL CONSULTANT

The U.S. NAO contracted with an attorney with expertise in the field of Mexican labor law to research the legal questions presented for review in this submission and to prepare a report of findings and conclusions to assist the NAO in its review of pertinent issues of Mexican labor law.¹² The three general areas of inquiry were:

- 1) the laws governing the formation, organization and conduct of business by a union;
- 2) the laws or regulations dealing with internal union affairs; and
- 3) the availability of remedies and enforcement under Mexican labor law.

Additionally, the report included an Appendix with information on collective labor agreements, statistics and jurisdiction.

G. PUBLIC HEARING

A public hearing was held in San Antonio, Texas on February 13, 1995, as part of the review of this submission.¹³ Notice of this hearing was published in the Federal Register on January 12, 1995, and the specific hearing location in San Antonio was announced on

¹² R. Leticia Cuevas, Analysis of Submissions Nos. 940003 and 940004, submitted to the U.S. National Administrative Office of the U.S. Department of Labor (January 1995).

¹³ The NAO Secretary opened the hearing with a statement explaining that the hearing would be conducted under the NAO's guidelines and that simultaneous translation was available, and clarifying the purpose and objective of the hearing. The Secretary emphasized that the purpose of the hearing was not to adjudicate individual rights, that it was not an adversarial proceeding, and thus, the rules of evidence would not be required. The Secretary articulated that the hearing format was used as a means of providing the public an opportunity to present information relevant to the NAO's review of this submission.

February 2, 1995. In accordance with the NAO's procedural guidelines, it was determined that a public hearing was an appropriate means of gathering information in the review of this submission. Under the NAO guidelines, at Section H.1,

The Secretary shall hold promptly a hearing on the submission, unless the Secretary determines that a hearing would not be a suitable method for carrying out the Office's responsibilities under Paragraph 1.

Fourteen individuals appeared on behalf of the submitters and presented testimony at the public hearing, including two attorneys, one of whom presented expert testimony on relevant Mexican labor law. Mr. Jerome Levinson, appeared as legal counsel on behalf of ILRERF, as one of a group of volunteer labor advocates. Ms. Estela Ríos appeared as an expert in Mexican labor law.

Additional witnesses included numerous workers and union delegates: Martha Ojeda, Isidra Figueroa, Berona Gallardo, Yolanda Treviño Vásquez, Alma Rosa Huerta, Blandina Ruíz Hernández, Jaime Martínez, María Luisa Becerra, Guadalupe Carrillo, Jovita García, Felicita Contreras, and Efraín Rendón. All of the workers testified as to their personal experiences and knowledge of the events alleged in the submission including testimony on their discontent with the recognized CTM union at MDM, the circumstances of their demotions and dismissals, forced resignations, the reasons for accepting severance pay, the election, the police use of force in the dispersal of a work stoppage, and their efforts to register an independent union.

Mr. Jerome Levinson explained the background of the submission, and summarized the case. He described the relationship between the CTM unions and the government, the difficulty encountered in organizing an independent union, and the management practices at MDM against workers trying to organize an independent union. He then introduced the witnesses, and provided explanations and clarifications as necessary.

Ms. Ojeda, a former union delegate and coordinator in the maquiladora industry in Nuevo Laredo, who studied law in Mexico, provided information on the workers' union situation in Nuevo Laredo. She testified that contrary to Sony's version, the election in question was part of a restructuring within the maquiladora's union in Nuevo Laredo and was held to elect an executive committee within each maquiladora. She further stated that the union by-laws concerning elections were not followed in this instance, and that the local CAB's denial of registration to the independent union was incorrect. Ms. Ojeda testified that union by-laws required the presence of half the union membership plus one to conduct elections.

Estela Ríos, a labor lawyer in Mexico with twenty years of experience, appeared as an expert witness on Mexican labor law. She testified about the legal aspects of union registration. She said that workers usually do not have access either to union by-laws or to the collective bargaining agreement. Ms. Ríos maintained that the CAB was incorrect in rejecting the union's registration petition, and that the CAB acted questionably when it informed the CTM union leader, Chema Morales, of details of the union's

registration petition. Registration, according to Ms. Ríos, is an administrative process.¹⁴ Registration may not be denied except for the specified reasons in the FLL and if legal documentation is missing, this should be pointed out to the workers. She further stated that the argument that the documents submitted did not contain the precise language on objectives specified for union registration is incorrect. She believed that the CAB denied the registration, giving spurious reasons, due to pressure from the CTM union. Finally, she testified that workers are often pressured to resign and accept severance pay or face the possibility of receiving no compensation.

Post-hearing submissions were received from the submitters and from the company. The submitters forwarded six documents, four of which the NAO requested at the public hearing, including the labor agreement between the company and the official union dated March 5, 1993; MDM's claim against the workers for alleged damages caused to the company during the work stoppage; the two CAB judgments denying the claims of the two workers who pursued their remedies and sought reinstatement rather than accept severance pay; and a copy of the Tamaulipas State Council of Arbitration and Conciliation's decision denying the *amparo* filed by the workers over the CAB's denial of their petition for registration.¹⁵ Additionally, a copy of

¹⁴ This is substantiated by Néstor de Buen L., Derecho del Trabajo, Seventh Edition (Mexico: Editorial Porrúa, 1989), Volume II, pp. 709-715.

¹⁵ Discussion of *amparo* provided at p. 20.

"Magneticos' 'Open Letter' of thanks to the Governor of the State for his assistance to the company in the dispute of the workers" was submitted by the submitters.

The company filed a letter dated February 21, 1995, disputing the hearing testimony of the workers and urging that the testimony presented in this submission failed to establish that MDM violated any Mexican labor laws or that the government of Mexico condoned any such violations.

IV. ENFORCEMENT BY THE GOVERNMENT OF MEXICO OF LABOR LAWS RELEVANT TO THE SUBMISSION ALLEGATIONS

A. NAALC OBLIGATIONS

Part Two of the NAALC sets out the obligations that Parties to the Agreement undertake. The obligations relating to levels of protection (Article 2), government enforcement action (Article 3), private action (Article 4) and procedural guarantees (Article 5) are key to this report. These Articles are restated in full in Appendix I of this report. In accord with Articles 3, 4 and 5, the issue presented in the review of this submission is whether the Government of Mexico is ensuring effective enforcement of its labor laws. Mexican labor law guaranteeing workers' freedom of association and the right to organize, providing protections against dismissal of workers because of their exercise of the right to organize, and governing the formation and registration of unions, was examined in reviewing this submission.

Article 123 of the Political Constitution of the United Mexican States provides the legal framework of Mexican labor law and, inter

alia, guarantees the right of workers to organize (Section XVI, Article 123) and protects against dismissal of workers because of their exercise of the right to organize (Section XXII, Article 123).¹⁶ Mexican labor law is codified as the Federal Labor Law (FLL).¹⁷ Title Two of the FLL deals with individual work relations, including dismissal of workers, and Title Seven deals with collective labor relations.

Additionally, Article 6 of the FLL, states that:

The laws and treaties entered into and approved in the terms of Article 133 of the Constitution, shall be applicable to the employment relations in all aspects that are beneficial to workers from the effective date of such law or treaty.

This is significant in that Mexico has ratified, inter alia, Convention 87 of the International Labor Organization (ILO), on "Freedom of Association and Protection of the Right to Organize." The aim of Convention 87 is "the right, freely exercised, of workers and employers, without distinction, to organize for furthering and defending their interests."¹⁸ According to Mexican law this international convention became a part of Mexican law upon

¹⁶ "Artículo 123 Constitucional," reprinted in Secretaría del Trabajo y Previsión Social, Ley Federal del Trabajo, 9th Edition (Mexico, 1993), pp. 9-20.

¹⁷ Ley Federal del Trabajo, 9th Edition (Mexico, 1992).

¹⁸ International Labour Office, Summaries of International Labour Standards, Second edition, (Geneva: International Labour Office, 1991), p. 5.

ratification by the Mexican Senate.¹⁹

B. DOMESTIC REMEDIES IN MEXICO

The instant submission involves alleged incidents that occurred at maquiladora plants located in Nuevo Laredo in the State of Tamaulipas. The CAB with jurisdiction over the labor law matters raised here is located in Ciudad Victoria, the capital of the State. Under the Mexican system of labor law administration, the implementation of labor law is under the purview of state authorities in their respective jurisdictions.²⁰ In this case, jurisdiction for the enforcement of labor law rests with state labor authorities.

The agencies of the Mexican government with responsibility for enforcing the labor laws in the State of Tamaulipas are:

-Local Conciliation and Arbitration Boards (Juntas Locales de Conciliación y Arbitraje, CAB) and Local Conciliation Boards (Juntas Locales de Conciliación, CB)--responsible for the resolution of labor-management disputes brought before it by either management or workers, in accordance with Article 123 of the Constitution and under the FLL, including those related to freedom of association and dismissal of workers.

-Labor Inspection Department (Departamento de Inspección del

¹⁹ The Mexican Senate's ratification of Convention 87 was published in the Diario Oficial de la Nación on October 16, 1950. Néstor de Buen L., Derecho del Trabajo, Seventh Edition (Mexico: Editorial Porrúa, 1989); Volume 1, p. 418.

²⁰ There are specified exceptions when federal jurisdiction applies.

Trabajo)--responsible for overseeing compliance with labor laws and regulations, including informing workers and management of the laws and regulations, and giving notice regarding violations of labor law. In particular, the Labor Inspection Department is responsible for compliance with worker safety and health laws and regulations.

-Office of the Labor Public Defenders (Procuraduría de la Defensa del Trabajo)--responsible for providing workers with counsel before any authority in matters related to the enforcement of labor law and regulations. They file ordinary or special proceedings for the defense of individual workers or unions, propose to interested parties ways to solve disputes, and formalize settlements between workers and management.

-Secretariat of Labor and Social Welfare (Secretaría del Trabajo y Previsión Social, STPS)--the federal agency responsible for the application of Article 123 of the Constitution through the FLL and its regulations. STPS supervises, from an administrative standpoint, the federal CABs, the Labor Inspection Department, and the Office of the Labor Public Defenders.

Amparo is the highest judicial tribunal review of the constitutionality and legality of government acts, whether judicial, administrative or concerning labor tribunals in Mexico. Mexican law provides two types of *Amparo*: 1) direct or single petition, which is presented before the official entity committing the act, and is resolved by the Federal Circuit Courts; and 2) indirect, which is submitted before a District Judge. The law of *amparo* governs these appeals and this is intended to be an independent process not

associated with other means of redress.

C. GOVERNMENTAL ACTION AND THE ALLEGATIONS IN SUBMISSION
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The separate allegations raised in the submission will be addressed seriatim herein with an emphasis on the remedies pursued and the government's enforcement action.

With respect to the first allegations, dealing with demotions and dismissals of MDM workers, the information provided by both the submitter and counsel for the company indicates that approximately thirteen MDM employees were either terminated or resigned from their employment during the period in question in this submission. It is agreed that several of these individuals were union delegates who had been relieved of their delegate status by the CTM union leadership. The information is contradictory as to exactly how many employees resigned and how many were terminated, as well as to the reasons provided for these actions, i.e., forced resignations versus voluntary resignations, and dismissals for cause versus dismissals without reasons provided.²¹ The information is consistent, however, that all but two of the MDM employees accepted severance payments and consistent with Mexican law, relinquished their rights to challenge the allegedly improper demotions, dismissals or forced resignations. It is undisputed that these severance arrangements

²¹ It is important to note, however, that four former employees presented themselves at the NAO public hearing to provide information concerning their personal experiences of being separated from employment with MDM, and responded to questions posed by the Secretary of the NAO. The company responded by letter, but offered no testimonial evidence by any individuals involved in the challenged events at MDM.

were endorsed by the appropriate state government entity, the local CAB.

It is also undisputed that two MDM employees declined to accept a severance payment and filed complaints with the local CAB seeking reinstatement.²² The local CAB issued judgments denying the claims of these two workers, thereby absolving the company from the payment of further compensation. The CAB upheld the dismissals on the grounds that one worker had been caught clocking out another worker on the time-clock, and that the other worker had submitted a voluntary resignation.

The next allegations concern the flawed conduct of the union delegate election held behind MDM plant number 7 on April 15, 1994, and a resulting demonstration and work stoppage immediately following the election. As discussed previously, the submitters presented testimonial evidence alleging that the election was not conducted in a democratic manner and was flawed in numerous respects, including: short notice and failure to notify some workers; an open vote rather than secret ballot; presence of MDM management to observe the election; and coercion by union officials and members of the official slate against workers supporting the dissident slate. Additionally, there are allegations that MDM collaborated with the police in violently suppressing a work stoppage and demonstration which ensued as a result of the election.

The company responded in writing through its counsel, that MDM

²² These two employees are signatories on the independent union's petition for registration.

had no involvement in conducting this election, that no MDM management were present at the election, and that they are unable to comment on alleged misconduct in the election process. With respect to the post-election demonstration and work stoppage, MDM contends that the "strike" was illegal, that there was no violence in dispersing the strikers, and that the workers were all given the opportunity to return to work without reprisal following the unlawful work stoppage.

It is undisputed that an election was conducted on April 15 and that a demonstration ensued thereafter, and a work stoppage commenced on April 16. There was no evidence presented that any of the workers involved in the election or the work stoppage pursued any legal remedies from the Mexican government concerning their complaints about the conduct of the election or the allegedly violent suppression of the work stoppage. Apparently, at the request of a party, Labor Inspectors can be present at an election to serve as an official witness. No such request was made in this instance. Several witnesses indicated that they attempted to meet with the Mayor of Nuevo Laredo to obtain a new election, but that arrangements were never made and they gave up on this course of action. There is no provision in the FLL providing that the Mayor of the city should intervene on behalf of the workers to correct a flawed union election. Recourse over the union election appears to be limited to within the union.

The final allegation concerns the CAB's denial of the workers' petition to register an independent union. The testimony and

documents presented by the submitters establish that an effort was made to register an independent union with the local CAB in Ciudad Victoria. The petition for registration was denied by the CAB on the following grounds (as translated and summarized by the NAO):

- The Secretary-General of the CTM union in Nuevo Laredo submitted evidence that another union already existed at the plant;
- The union objectives were insufficiently stated;
- The necessary documentation was not submitted in duplicate;
- Other generalized deficiencies of the required supporting documentation.

The petitioners appealed the CAB decision (filed an *amparo*) and it was reviewed by a Second District Court Judge in Ciudad Victoria. The Court issued a decision finding that the CAB incorrectly concluded that the first two conditions were appropriate grounds for denial of the registration petition, but still upholding the denial of registration on the basis of the last two reasons: failure to submit the petition in duplicate and for other unspecified deficiencies in the supporting documentation.

V. FINDINGS AND RECOMMENDATIONS

The NAO review of this submission has focused specifically on the Government of Mexico's compliance with its obligations under the NAALC. The NAO has considered whether Mexico has promoted compliance with, and effective enforcement of, its labor laws that guarantee the right of association and the right to organize freely and prohibit the dismissal of workers because of efforts to exercise those rights (Article 3); whether Mexico has ensured that persons

have appropriate access to, and recourse to, tribunals and procedures under which labor laws and collective agreements can be enforced (Article 4); whether Mexico has ensured that its tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent (Article 5). As such, the NAO review has not been aimed at determining whether or not the company named in the submission may have acted in violation of Mexican labor law. Rather, the purpose of the NAO review process, including the public hearing, was to gather as much information as possible to allow the NAO to better understand and publicly report on the Government of Mexico's fulfillment of its obligations as set out in Article 3 of the NAALC. In addition, this review gathered information to publicly report on whether the Government of Mexico is complying with its obligations under Article 4 of the NAALC concerning availability of private action for persons with a legally recognized interest under the laws, and Article 5 of the NAALC concerning procedural guarantees that its proceedings are fair, equitable and transparent.

As discussed previously in this report, the review of the submission reveals disagreements about the challenged actions and events at the MDM plants. The nature and extent of the information provided by the submitters and by the company have been detailed herein and their respective renditions of the facts have been set forth in this report. Based on this information, as well as all of the additional information gathered in this review and referenced in this report, the NAO makes the following findings and

recommendations.

A. Dismissals

The testimony and affidavits of the witnesses concerning allegations of intimidation against workers as a means of impeding formation of unions, including demotions, dismissals, threats of blacklisting, and the pressure exerted on the employees to accept severance payments and sign releases or resignations, were carefully considered. The NAO cannot ignore the similarities of these accounts and of those reviewed by the NAO in the first two submissions filed before it.²³ In the first report, it was specifically noted that many workers chose severance pay rather than pursue their legal remedies. This scenario is repeated in the instant situation, and the only explanation offered for this, outside of the economic circumstances discussed below, was the consistent testimony offered by workers that management personnel and CTM representatives pressured and intimidated them into signing full releases and accepting severance as soon as it was offered so as not to risk losing it and/or to avoid being blacklisted in the maquiladoras. The NAO has also received information from experts on the Mexican labor law system indicating that maquiladora workers often feel pressured to sign voluntary resignations in order to receive severance rather than risk receiving nothing if they pursue legal redress and lose.

²³ The discussion of these issues in the first two submissions, can be found in the Public Report issued by the NAO on October 12, 1994, at pp. 28-31.

Considering the duration of employment of the dismissed workers with MDM (ranging from four to fifteen years), their documented association with the opposition union movement, and the circumstances of their separation, it appears plausible that the workers' discharges occurred for the causes alleged, namely for participation in union organizing activities. The timing of these dismissals coincides with a period of intra-union dissension and an organizing drive by an independent union at the MDM plants, and the economic realities facing these Mexican workers make it very difficult to seek redress from the proper Mexican authorities for violations of Mexican labor law. These workers generally do not have the financial resources to pursue reinstatement before the CABs, often opting for settlement of their complaints in return for money, as happened here in all but two instances. More importantly, the workers repeatedly articulated their concerns about impediments in obtaining impartial legal remedies.

Based on all of this information, the NAO will continue to pursue trilateral programs under the NAALC which emphasize exchanges on laws and procedures to protect workers from dismissal for exercising their rights to organize and to freedom of association, and proposes specific follow-up activities to the recently concluded trilateral program on industrial relations

issues.²⁴ Additionally, the U.S. NAO will conduct a study to explore the practices and findings of the local CABs with respect to workers' complaints of unjustified dismissals, in view of the obligations presented in Article 5 of the NAALC for each Party to ensure that its labor tribunal proceedings are fair, equitable and transparent, and will publish the results of this study.²⁵

B. Union Election

There is considerable testimonial evidence that the challenged election was called on short notice, that many workers were not notified, and that the election was conducted by open rather than secret ballot, though the latter was favored by many workers. There was testimony at the hearing that maquiladora workers do not have access to their union by-laws or to collective bargaining agreements, and that in practice, only the union leadership has the right to these documents. The FLL appears to leave the conduct of internal union affairs largely in the hands of the unions themselves. Although questions were presented by the U.S. NAO to its consultant, to the Mexican NAO and to the witnesses at the hearing, concerning internal union operations and the remedies available to workers' challenging an action by a labor union which

²⁴ In the first report of October 12, 1994, the U.S. NAO recommended that the three countries consider a government-to-government trilateral conference on freedom of association issues (including law, enforcement authorities, enforcement record) with participation from state and provincial authorities. The first trilateral government-to-government conference on these issues was held in Washington, D.C. on March 27 and 28, 1995.

²⁵ The NAO's Procedural Guidelines at Section J. 3, provides for publishing such special reports.

interferes with workers' rights, it remains unclear whether there are applicable laws dealing with these issues and whether the workers have any viable recourse against improper union actions.

The hearing testimony indicating that the sole remedy when the union violates its own governing instruments is within the union, is supported by much of the information received by the NAO on this issue. This raises questions regarding availability of private action and procedural guarantees addressed in Articles 4 and 5 of the NAALC. The U.S. NAO proposes to add this issue to the trilateral exchange program agenda and to focus attention on the questions presented by the workers' allegations of inappropriate conduct by the recognized union at MDM for which there may effectively be no redress available.

C. Work Stoppage

Under the FLL, the work stoppage which followed the election was not an authorized strike. Nevertheless, the allegations of police violence are disturbing, and the information provided by the company and the submitters is inconsistent. The company has stated that it conducted its own investigation on this matter, which revealed that no violence was used to disperse this illegal strike, and that the only incident was when one female worker attacked a policeman with a rolled up magazine. To the contrary the workers have submitted testimony of police mistreatment towards fellow workers including physical force. In addition, the submitters provided local news accounts in support of the workers' testimony. To assist the U.S. NAO to better understand this incident, the U.S.

NAO requests that the Mexican NAO provide any available information on the police involvement in the work stoppage at MDM.

D. Union Registration

Turning to the denial of the workers' union registration petition, it is clear that in order for a union to be officially recognized in Mexico, it must register with the local CAB in instances where local jurisdiction applies, such as in the instant situation.²⁶ The workers presented testimonial evidence at the hearing and by sworn affidavits, and the submitters provided relevant documents to support their contentions that their petition for registration was denied on technicalities by the local CAB.²⁷ The documents include a copy of the petition for registration, the denial of the registration by the CAB in Ciudad Victoria, and the denial of the *amparo* filed to seek reversal of the local CAB's denial of the petition for registration.

The decision of the Second District Court in Ciudad Victoria, Tamaulipas found without merit two of the reasons the local CAB provided for denial of the registration petition, but upheld the denial of registration for failure to submit a duplicate of the petition and for other unspecified deficiencies in the supporting

²⁶ A more thorough discussion of the registration requirements under the FLL can be found in the attached Appendix II, and in the report prepared by Leticia R. Cuevas, at pp. 4-10, 43-44.

²⁷ The company clearly articulated in writing, by letter of February 21, that it takes "absolutely no position concerning this matter." In addition, the company explained that it has no substantive knowledge concerning this matter and that the only entities which might be knowledgeable concerning this issue are the employees and the Mexican government.

documentation. Concerning the lack of duplicate copies, expert testimony presented to the U.S. NAO indicates that the CABs are specifically empowered to remedy these types of minor administrative deficiencies. The additional rationale adduced by the CAB and the court is not clear as the description of this deficiency was not clearly articulated by the CAB or the Court.

It is not insignificant that the time consumed by the denials on these grounds has arguably caused the interested workers an irreparable harm in that several workers who signed the original petition (including the leaders of the movement to register a new union), were subsequently separated from their employment. As a result, even if the workers avail themselves of the opportunity to re-submit the petition in proper form, it could become even more challenging to locate the requisite number of eligible workers to sign a new petition for registration. Certainly, the appearance that workers were dismissed for engaging in union activity might have a negative impact on future efforts to obtain additional workers' signatures. Moreover, that the registration process appears to have been thwarted by technicalities serves as an additional disincentive.

Finally, the CAB's acknowledgement in its denial of the registration petition that the Secretary-General of the FTNL (the CTM union in Nuevo Laredo) filed a letter opposing registration of this independent union and further submitted a copy of the recognized union's collective bargaining agreement at MDM as grounds for denial of the petition, tends to support the allegations of the

submitters that the FTNL was permitted by the CAB to be involved in the registration process of the independent union.

Given that serious questions are raised herein concerning the workers' ability to obtain recognition of an independent union through the registration process with the local CAB, and as compliance with and effective enforcement of the laws pertaining to union recognition are fundamental to ensuring the right to organize and freedom of association, the NAO recommends that ministerial consultations are appropriate to further address the operation of the union registration process.

Accordingly, the NAO recommends ministerial consultations on these matters pursuant to Article 22 of the NAALC.²⁸



Irasema Garza
Secretary, National Administrative Office

* * *

Based on the foregoing report, I accept the NAO's recommendation to request ministerial consultations under Article 22 of the NAALC on the issues concerning union registration raised by the report on Submission No. 940003, and I accept the NAO's recommendations for additional trinational exchanges on the other industrial relations issues.



Robert B. Reich
Secretary of Labor

²⁸ Article 22 states,

1. Any Party may request in writing consultations with another Party at the ministerial level regarding any matter within the scope of this Agreement. The requesting Party shall provide specific and sufficient information to allow the requested Party to respond.
2. The requesting Party shall promptly notify the other Parties of the request. A third Party that considers it has a substantial interest in the matter shall be entitled to participate in the consultations on notice to the other Parties.
3. The consulting Parties shall make every attempt to resolve the matter through consultations under this Article, including through the exchange of publicly available information to enable a full examination of the matter.

APPENDIX I

NAALC OBLIGATIONS

Article 2: Levels of Protection

Affirming full respect for each Party's constitution, and recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.

Article 3: Government Enforcement Action

1. Each Party shall promote compliance with and effectively enforce its labor law through appropriate government action, subject to Article 42, such as:

- (a) appointing and training inspectors;
- (b) monitoring compliance and investigating suspected violations, including through on-site inspections;
- (c) seeking assurances of voluntary compliance;
- (d) requiring record keeping and reporting;
- (e) encouraging the establishment of worker-management committees to address labor regulation of the workplace;
- (f) providing or encouraging mediation, conciliation and arbitration services; or
- (g) initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labor law.

2. Each Party shall ensure that its competent authorities give due consideration in accordance with its law to any request by an employer, employee or their representatives, or other interested person, for an investigation of an alleged violation of the Party's labor law.

Article 4: Private Action

1. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter

have appropriate access to administrative, quasi-judicial, judicial or labor tribunals for the enforcement of the Party's labor law.

2. Each Party's law shall ensure that such persons may have recourse to, as appropriate, procedures by which rights arising under:

(a) its labor law, including in respect of occupational safety and health, employment standards, industrial relations and migrant workers, and

(b) collective agreements,

can be enforced.

Article 5: Procedural Guarantees

1. Each Party shall ensure that its administrative, quasi-judicial, judicial and labor tribunal proceedings for the enforcement of its labor law are fair, equitable and transparent and, to this end, each Party shall provide that:

(a) such proceedings comply with due process of law;

(b) any hearings in such proceedings are open to the public, except where the administration of justice otherwise requires;

(c) the parties to such proceedings are entitled to support or defend their respective positions and to present information or evidence; and

(d) such proceedings are not unnecessarily complicated and do not entail unreasonable charges or time limits or unwarranted delays.

2. Each Party shall provide that final decisions on the merits of the case in such proceedings are:

(a) in writing and preferably state the reasons on which the decisions are based;

(b) made available without undue delay to the parties to the proceedings and, consistent with its law, to the public; and

(c) based on information or evidence in respect of which the parties were offered the opportunity to be heard.

3. Each Party shall provide, as appropriate, that parties to such proceedings have the right, in accordance with its law, to seek review and, where warranted, correction of final decisions issued in such proceedings.

4. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

5. Each Party shall provide that the parties to administrative, quasi-judicial, judicial or labor tribunal proceedings may seek remedies to ensure the enforcement of their labor rights. Such remedies may include, as appropriate, orders, compliance agreements, fines, penalties, imprisonment, injunctions or emergency workplace closures.

6. Each Party may, as appropriate, adopt or maintain labor defense offices to represent or advise workers or their organizations.

7. Nothing in this Article shall be construed to require a Party to establish, or to prevent a Party from establishing, a judicial system for the enforcement of its labor law distinct from its system for the enforcement of laws in general.

8. For greater certainty, decisions by each Party's administrative, quasi-judicial, judicial or labor tribunals, or pending decisions, as well as related proceedings shall not be subject to revision or reopened under the provisions of this Agreement.

APPENDIX II

RECOGNITION OF UNIONS

In order to be officially recognized, unions must register with the Secretariat of Labor and Social Welfare (Secretaría del Trabajo y Previsión Social, STPS) in instances where the Federal Government has jurisdiction, and with the local CAB in instances where local jurisdiction applies. Registration requires the presentation of the following documents: (1) a certified copy of the minutes of the general meeting at which the union was established; (2) a list of the names of the members and of their employers; (3) a certified copy of the by-laws; and (4) a certified copy of the minutes of the meeting at which the Board of Directors was elected (FLL, Article 365).

Once the required documents are presented to STPS or a CAB, registration occurs within 60 days unless the registering authority determines that: (1) the purposes of the union do not coincide with those set out in Article 356 ("the study, advancement and defense of the...[rights of workers]"); (2) the union does not have the minimum number of workers established by Article 364 (20 workers); or (3) the union has not submitted all of the documents required by Article 365 (FLL, Article 366).

Union by-laws must contain the following: (1) the name of the union; (2) its address; (3) its objectives; (4) the time period for

which it was established; (5) conditions for membership; (6) obligations and rights of members; (7) causes and procedures for expulsion; (8) procedures for holding meetings; (9) procedures for the election of a board of officers; (10) length of tenure of officers; (11) regulations regarding the management of the assets of the union; (12) form of payment and amount of union dues; (13) dates for presentation of financial statements; (14) rules for liquidating union assets; and (15) other rules approved by the membership (FLL, Article 371).